

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LARRY DEVEL STEWART,

Petitioner,

v.

TONY TRIERWEILER,

Respondent.

Case No. 15-11843
Hon. Terrence G. Berg

**OPINION AND ORDER ON REMAND REOPENING THE
PETITION FOR WRIT OF HABEAS CORPUS TO THE
COURT’S ACTIVE DOCKET, AMENDING CAPTION, AND
SETTING DEADLINES FOR THE PARTIES TO FILE
SUPPLEMENTAL PLEADINGS**

Larry Devel Stewart, (“Petitioner”), presently at the Bellamy Correctional Facility in Ionia, Michigan, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions for first-degree felony murder, armed robbery, conspiracy to commit armed robbery, and felony-firearm. This Court¹ conditionally granted Petitioner a writ of habeas corpus on his prosecutorial misconduct and Sixth Amendment right to confrontation claims, while declining to address his other claims. Dkt. 9 at Pg ID 1326.

¹ This case was previously assigned to the Honorable Gerald E. Rosen, formerly Chief Judge, now retired.

Respondent appealed to the Sixth Circuit, which reversed and remanded for further proceedings addressing Petitioner's remaining claims that: 1) the prosecution violated his Fifth Amendment rights by mentioning his post-*Miranda* silence; 2) there was insufficient evidence to support his convictions for conspiracy to commit armed robbery and first-degree felony murder; 3) the court failed to instruct the jury on a lesser included offense; and 4) his defense counsel was ineffective. Dkt. 19 at Pg ID 1455, 1463.

The Sixth Circuit entered its mandate on November 14, 2017 and the case was reassigned on November 16, 2017.

Federal courts have the power to order that a habeas petition be reinstated in various contexts. *See e.g. Rodriguez v. Jones*, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). The Court will therefore reopen the petition to adjudicate petitioner's remaining claims.

The Court will also amend the caption to reflect that the proper Respondent in this case is now Petitioner's current warden, Tony Trierweiler. *See Edwards Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006).

Petitioner is granted ninety (90) days from the date of this order to file any supplemental brief that he wishes to submit in

support of his remaining claims. Respondent shall have sixty (60) days after the filing of any supplemental brief by Petitioner (or after the expiration of the ninety-day period) to file a response brief, if he so chooses.

ORDER

The Court orders that:

- (1) The case is **REOPENED** to the Court's Active Docket.
- (2) The case caption is amended.
- (3) Petitioner is **GRANTED** ninety (90) days from the date of this order to file any supplemental brief that he may wish to submit in support of his remaining claims. Respondent shall then have sixty (60) days after the filing of any supplemental brief by Petitioner or the expiration of the ninety-day period to do so to file a response brief, if he so chooses.

SO ORDERED.

Dated: December 21, 2017

s/Terrence G. Berg

TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that this Order was electronically filed, and the parties and/or counsel of record were served on December 21, 2017.

s/H. Monda

Case Manager,
in the absence of A. Chubb